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Subject: Microsoft Settlement

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement.

It is my opinion that the Proposed Final Judgment fails to prohibit anticompetitive practices towards OEMs.

Section III.A.2. allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

Section III.B. requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs, including important regional 'white box' OEMs, if they offer competing products.

Section III.B. also allows Microsoft to offer unspecified Market Development Allowances -- in effect, discounts -- to OEMs. For instance, Microsoft could offer discounts on Windows to OEMs based on the number of copies of Microsoft Office or Pocket PC systems sold by that OEM. In effect, this allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas, such as office software or ARM-compatible operating systems.

By allowing these practices, the PFJ is encouraging Microsoft to extend its monopoly in Intel-compatible operating systems, and to leverage it into new areas.

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